IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

OP.No. 18069 of 2001(A)

PETITIONER:

NAIR SERVICE SOCEITY, CHANGANACHERRY,
REPRESENTED BY ITS GENERAL SECRETARY,
P.K. NARAYANA PANICKER,
LAKSHMI VILASOM BUNGLOW, VAZHAPPALLY,
CHANGANACHERRY.

BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
ADV. SRI.GOVINDKUMAR MENON

RESPONDENTS:
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1. GOVERNMENT OF KERALA REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CONTROLLING OFFICER AND PRINCIPAL, GOVERNMENT HOMOEO COLLEGE, IRANIMUTTAM, THIRUVANANTHAPURAM.

BY SPL. GOVERNMENT PLEADER SHRI C.T. RAVIKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 18069 of 2001(A)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1	:	TRUE COPY OF THE ANNEXURE C OF THE HOMEOPATHY (MINIMUM STANDARDS OF EDUCATION) REGULATIONS, 1983.
EXT. P2	:	TRUE COPY OF THE GOVERNMENT ORDER NO. G.O. (MS) 511/95/H&FWD DATED 10.11.1995.
EXT. P3	:	TRUE COPY OF THE AGREEMENT DATED 01.12.1995 ENTERED INTO BY THE PETITIONER WITH THE GOVERNMENT.
EXT.P4	:	TRUE COPY OF THE GOVERNMENT LETTER DATED 20.08.2000.
EXT.P5	:	TRUE COPY OF THE INSPECTION REPORT DT. 09.05.2000 OF THE CENTRAL COUNCIL OF HOMEOPATHY.
EXT. P6	:	TRUE COPY OF THE GOVERNMENT ORDER NO.G.O,.(MS) 154/97/H&FWD DATED 06.05.1997.
EXT.P7	:	TRUE COPY OF THE JUDGMENT DATED 10.07.2000 IN O.P.NO. 19187 OF 2000 OF THIS HON'BLE COURT.
EXT.P8	:	TRUE COPY OF THE LETTER NO. 39085/J2/2000/H&FWD DATED 09.01.2001.
EXT.P9	:	TRUE COPY OF THE LETTER NO.12-12/2000-CCH DATED 28.05.2001.
EXT.P10	:	TRUE COPY OF ANNEXURE C TO THE HOMEOPATHY (MINIMUM STANDARDS OF EDUCATION) REGULATIONS AS AMENDED CONTAINING THE REVISED STAFF PATTERN.
EXT.P11	:	TRUE COPY OF THE LETTER DATED 06.12.2003 ALONG WITH THE STATEMENT.
EXT.P12	:	TRUE COPY OF THE GOVERNMENT ORDER NO.G.O.(MS) 27/2005/H &FWD DATED 02.02.2005.
EXT.P13	:	TRUE COPY OF THE GOVERNMENT NO. G.O.(MS) No. 150/2007/H &FWD DATED 29.06.2007.

/TRUE COPY/

P.A. TO JUDGE.

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. No.18069 OF 2001

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Dated this the 23rd July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Petitioner is the educational agency of a Homeo Medical Degree College, the Athurasramam N.S.S. Homeo Medical Degree College, Kurichi. It is imparting education for Bachelor of Homeopathic Medicine Surgery. Initially, it was affiliated to the Kerala University and now it is affiliated to the Mahatma Gandhi University. The University is governed by the provisions of the Homeopathy Central Council Act, 1973 (hereinafter referred to as "Act') and Homeopathy (Minimum standards of Education) Regulations, 1983 (hereinafter referred to as 'Regulations') framed by the Central Council.

2. The aforesaid college has entered into an agreement with the State Government. The grievance of the petitioner is that the State Government has not sanctioned the staff pattern as required under the provisions of the Act read with the Regulations. The petitioner had approached the State Government for sanctioning the staff strength as required under the aforesaid Act and the Regulations. The State Government by its order dated 09.01.2001, had rejected the request made by the petitioner. In the said order, the State Government had pleaded its financial constraints to sanction the staff strength as required under the provisions of the Act and the Regulations.

3. The Central Council of Homeopathy has now issued yet another notification dated 11th September, 2002. The said notification is issued by the Central Council in exercise of its powers conferred by clauses (i), (j) and (k)

of Section 33 and sub-section (1) of Section 20 of the Act (59 of 1973). Annexure-C appended to the aforesaid notification provides for minimum teaching staff for degree course. After promulgation of the said notification, the petitioner-Institution has approached the State Government once again by its request dated 06.12.2003 to sanction enough staff strength as required under the provisions of the Act. Since there is no response from the State Government , the petitioner is before us in this Original Petition for appropriate directions.

4. As we have already noticed , the State Government is pleading its financial constraints to sanction the staff strength as required under the provisions of the Act and the Regulations. It is not its case that it is bound by neither the provisions of the Act nor the Regulations framed under the aforesaid Act. At the outset, the reasons assigned by the State Government pleading its financial constraints, cannot be taken as a good ground. But taking into consideration the paucity of funds to grant teachers' salary etc,. the State Government has come out with the aforesaid statement. The financial position of the State Government might have been improved as on today. Therefore, if we issue a direction to the State Government to consider the second representation filed by the Institution (represented by the petitioner), dated 06.12.2003, no prejudice would be caused to any one of the parties. Therefore, without going into further details of the case, the Original Petition is disposed of. Accordingly, the following:

O R D E R

i) Original Petition is disposed of.

ii) State Government is directed to consider the representation filed by the petitioner-Institution dated 06.12.2003, in accordance with the provisions of the Act and the Regulations and also the notification issued by the Central Council of Homeopathy dated 11th September, 2002, as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this order.

iii) After taking a decision, the State Government is directed to issue a proper endorsement to the petitioner-institution. If for any reason, it is aggrieved by the said endorsement, liberty is reserved to the petitioner-institution to approach the appropriate forum for appropriate reliefs.

(iv) I.A.No. 9534 of 2007 is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J. &
K.T. SANKARAN, J.

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O.P. No. 18069 OF 2001

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Dated this the 23rd July, 2007

J U D G M E N T